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October 20, 1997

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VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

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OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: In the Matter of  
Review of the Commission's Rules  
Regarding The Main Studio and  
Local Public Inspection Files of  
Broadcast Television and Radio Stations  
(MM Docket No. 97-138)

Dear Mr. Caton:

Transmitted herewith, on behalf of Nationwide Communications Inc., is an original and four copies of its Comments in the above-referenced proceeding.

Should you have any questions please contact the undersigned.

Very truly yours,

HOLLAND &amp; KNIGHT LLP

Patricia Y. Lee  
Counsel for  
Nationwide Communications Inc.

## Enclosures

[illegible]

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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| In the Matter of                     | ) |                      |
|                                      | ) |                      |
| Review of the Commission's Rules     | ) | MM Docket No. 97-138 |
| Regarding The Main Studio and Local  | ) |                      |
| Public Inspection Files of Broadcast | ) |                      |
| Television and Radio Stations        | ) |                      |

To: The Commission

**COMMENTS OF NATIONWIDE COMMUNICATIONS INC.**

**I. INTRODUCTION.**

1. Nationwide Communications Inc. ("NCI"), by its counsel, hereby submits the following comments in response to the *Notice of Proposed Rule Making ("NPRM")* released by the Commission on May 28, 1997 in the above-captioned proceeding.<sup>1</sup>

2. NCI is the licensee of 18 radio stations located throughout the United States. Each of its stations receives a large number of correspondence from its listeners, the vast majority of which deal with the airing of a particular song or singer or congratulating the station on recent achievements. Currently, out of an abundance of caution, these correspondence are being classified as regarding the "operation of their station" and are being placed in the stations' public inspection files.

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<sup>1</sup> The comment date having passed, NCI seeks leave to file these late filed comments. The material filed herewith only recently came to the attention of counsel and it is believed that the public interest will best be served by the Commission's consideration thereof. It is noted that no party would be prejudiced by the inclusion of these comments in the proceeding.

3. Most of NCI's radio stations have home pages on the Internet. The volume of correspondence received by those stations has increased exponentially with the advent of the Internet and electronic mail ("e-mail") and, in fact, e-mails now make up the majority of the correspondence received from listeners by NCI stations. The subjects of the correspondence, however, have remained the same -- comments about programming and station personalities.

4. In Paragraph 26 of the *NPRM* the Commission requests comment on its proposal to clarify that Section 73.1202 of its rules, which requires stations to retain in their public files "[a]ll written comments and suggestions received from the public by licensees of commercial AM, FM, and TV broadcast stations regarding operation of their station . . .," extends to e-mails. *NPRM* at ¶ 26. That is, the Commission proposes to require stations to print hard copies of e-mails received from listeners and place them in their public files.

5. NCI respectfully submits that such a requirement would be unduly burdensome and a waste of resources, and would not further the Commission's purpose behind its letter retention requirement of facilitating local dialogue. Accordingly, NCI urges the Commission not to adopt its proposal to extend Section 73.1202 of its rules to Internet e-mails.

## **II. RETENTION OF INTERNET E-MAILS IN THE PUBLIC FILES WILL NOT FACILITATE LOCAL DIALOGUE.**

6. The letter retention requirement has been in effect since January 1, 1974. *See Formulation of Rules and Policies Relating to the Renewal of Broadcast Licenses, Final Report and Order*, 43 F.C.C.2d 1 (1973). The Commission's reasons for adopting the letter retention requirement were two-fold:

One, it was to provide interested members of the public, or the Commission in instances where a petition to deny has been filed, information to better

determine the nature of community feedback being received by the licensee; and two, to provide a better indication of the extent to which an interested party's opinions regarding community problems and needs and/or the licensee's broadcast operation might be shared by other members of the community.

*Petition for Rule Making to Require Broadcast Licensees to Maintain Certain Program Records, Third Report and Order ("1977 Rule Making")*, 64 F.C.C.2d 1100, 1109 (1977). In short, the Commission sought to facilitate local dialogue. However, as early as 1977, only three years after the letter retention requirement went into effect, radio station licensees alerted the Commission to the problems that they were encountering with the requirement. In comments filed in response to the *1977 Rule Making*, radio station licensees complained "that they received many letters and that retention was a significant burden" and questioned "the usefulness of the letters and comments themselves." 64 F.C.C. 2d at 1108-1109.

7. The problems and concerns with the retention requirement expressed in the *1977 Rule Making* are very real today and, indeed, have become more acute due to the advent of the Internet and e-mail. Put simply, e-mail has exacerbated the two basic problems with the letter retention requirement: (1) the process of retaining comments from the public strains stations' staff and physical facilities, and (2) the routine retention of comments from the public frustrates the primary purpose behind Section 73.1202.

8. As proposed, the e-mail retention requirement will impose significant administrative burdens on broadcast stations and direct limited human resources away from programming and other core station operations and toward a task with questionable public interest benefits. Many radio station licensees with limited physical facilities are not equipped to handle

the volume of paper inherent in this requirement. If the Commission adopts this proposal, employees will have to review each e-mail received from listeners and determine whether it falls under Section 73.1202 and, if so, print a hard copy of the e-mail and place it in the station's public file.<sup>2</sup> In the course of a three year period, the number of work hours devoted to this task and the number of pages of e-mails printed and stored in the public file will be enormous.

9. NCI's FM station WGAR, Cleveland, Ohio, receives from listeners approximately 15 to 20 e-mails a day. Its sister FM station in Cleveland, WMMS, receives from listeners approximately 30 e-mails per day. As e-mails are typically printed on a single sheet of paper, WMMS, for example, will be required to store over 23,000 pages of e-mails in a three year period.<sup>3</sup>

10. As mentioned above, the principal expressed purpose of the letter retention requirement is to facilitate local dialogue. NCI agrees with the Commission that Web home pages on the Internet and e-mail "facilitate a dialogue between licensees and their communities that can lead to better service to the public." *NPRM* at ¶ 31. A dialogue occurs when a listener transmits an e-mail to the station and a station employee reads the e-mail and responds. Listeners, on a daily basis, are already voluntarily engaging in these e-mail dialogues with radio stations.

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<sup>2</sup> To increase dialogue between stations and members of their communities and make it more effective, some NCI stations use different e-mail mailboxes for the station manager, promotion department, on-air personalities and news department. This is possible because e-mail is paperless and virtually instantaneous. By requiring the printing and filing of e-mails received, the Commission will unnecessarily burden and frustrate an otherwise efficient technology.

<sup>3</sup> Multiple e-mails could be photocopied on a single page but that would require special handling by a staff member which frustrates the ease and convenience of using e-mail.

11. The Commission envisions that the proposed e-mail retention requirement will facilitate a second dialogue between members of the public who review the e-mails sent to stations by other members of the community. The Commission believes that this "secondary" dialogue is in the public interest. NCI respectfully disagrees for two reasons. First, very few, if any, members of the public ever request to inspect a station's public file. Most NCI stations have never had a member of the public review the public inspection file. If we file it, they will *not* come -- the public inspection file is not a "Field of Dreams." Second, even if a member of the public were to review a station's public file, his or her review of hard copies of e-mails would be of no real value or interest to a member of the public who seeks to undertake a conscientious review of a station's correspondence and assess the licensee's performance as seen by other members of the community. Indeed, review of a station's e-mails will yield little more than knowledge of the detailed programming preferences of certain members of the community at any given time or over the retention period. In short, NCI submits that this "secondary" dialogue will contribute little benefit, if any, to the public.

**III. THE PHRASE "OPERATION OF THEIR STATION" SHOULD BE CLARIFIED AND NARROWED TO INCLUDE ONLY CRITICISMS OF THE STATION AND THE RETENTION PERIOD SHOULD BE REDUCED TO SIX MONTHS.**

12. NCI urges the Commission to eliminate Section 73.1202. However, should the Commission conclude that continuation of Section 73.1202 is in the public interest, NCI requests that the Commission clarify and narrow the meaning of the phrase "operation of their station" and substantially reduce the retention period for comments placed in the public file pursuant to Section 73.1202.

13. The Commission should amend Section 73.1202 to require stations to retain in their public files only letters from members of the public that criticize the station's operation or programming. As discussed above, complimentary comments about programming and the station's operation contribute little benefit, if any, to the public.

14. NCI urges the Commission not to extend the requirements of Section 73.1202 to e-mails. For all of the reasons mentioned above, such a requirement would impose a significant and unnecessary administrative burden on radio station licensees and might discourage e-mail use by stations. If the Commission adopts its proposal to include e-mails under the purview of Section 73.1202, then, as we suggest with letters, it should require only that e-mails critical of the station's operation be retained.

15. Further, NCI urges the Commission to reduce the retention period from three years to six months. NCI believes that comments three years old have very little relevance to a station's current programming and operation. A six-month retention period would significantly reduce the quantity of letters and e-mails required to be retained, but still permit interested members of the public to assess others' current criticisms of the licensee's performance.


#### **IV. CONCLUSION.**

16. The letter retention requirement is obsolete and unreasonably burdensome to broadcast licensees and contributes no cognizable benefits to members of the public. Further, the extension of the retention requirement to include e-mails will only add to the burden of storing thousands of pages of comments, the majority of which are in the form of friendly banter. It is respectfully requested that the Commission eliminate Section 73.1202 or, in the alternative,

modify that section of the Commission's rules to limit its applications to letters, and not e-mails, which criticize the operation of a station and to reduce the retention period to six months.

Respectfully submitted,

NATIONWIDE COMMUNICATIONS INC.

A handwritten signature in black ink, appearing to read "Edward W. Hummers, Jr.", is written over a horizontal line.

Edward W. Hummers, Jr.

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Its counsel

October 20, 1997

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